

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3013 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALDEVBHAI CHHAGANBHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner
SERVED for Respondent No. 1, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/07/1996

ORAL JUDGEMENT

The petitioner Baldev Chhaganbhai Makwana in this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order of his detention dated 22.1.1996 passed under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') by the Police Commissioner, Ahmedabad City (hereinafter referred to as the 'detaining authority').

As can be seen from the grounds of detention supplied to the detenu, on the basis of three prohibition cases and two criminal cases registered under the provisions of IPC coupled with the statements of the witnesses for the alleged incidents dated 25.12.1995 and 1.1.1996 for the alleged anti social and nefarious activities of the detenu, the detaining authority has

recorded subjective satisfaction that the detenu is a bootlegger as well as a dangerous person and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr. Raval learned advocate for the petitioner submitted that the statements recorded against the detenu have not been varified either by the Investigating Officer or by the detaining authority and, therefore, the powers under section 9(2) of the PASA Act exercised by the detaining authority in not disclosing the identity of the witnesses to the detenu is not genuine and the detenu is denied his valuable right to make an effective representation against the allegations made by the witnesses. Mr. Raval, therefore, submitted that the petition is required to be allowed. IN view of the fact that in the instant case, no affidavit is filed on behalf of the respondents, I have called upon learned AGP Mr. Bhatt to produce the case file. Having perused the case file, it appears that the detaining authroity in his own hand-writting considered the material placed before him and on being satisfied with the same, he has passed the impugned order. However, nothing is stated by him about the apprehension of the witnesses regarding their safety and security warranting him not to disclose their identitiy by exercising the powers under sec. 9(2) of the PASA Act. Similarly, no instruction is given by him to the Investigating Officer who has recorded the statements to verify the statements of the witnesses. Mr. Bhatt learned AGP pointed out that the detaining authority has taken proper care and has considered the material placed before him minutely and, therefore, verification is not necessary. I afraid it is not possible to accept the said submission. Verification of the statements is not an ideal formality. The detaining authority is under obligation to verify the statements or get it verified from the officer who has recorded the statements before exercising the powers under section 9(2) of the Act. The fact that no material is produced by the respondents whereby the witnesses have apprehended fear and their safety, if their identity is disclosed, the detaining authority ought not to have kept back the identity of the witnesses to the detenu by exercising the powers under section 9(2) of the Act. Consequently. the detenu is denied a right to make an effective representation guaranteed under Article 22(5) of the Constitution of India and, therefore, the continued detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 22.1.1996 is quashed and set aside. The detenu-Baldev Chhaganbhai Makwana is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute with no order as to costs.
